

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

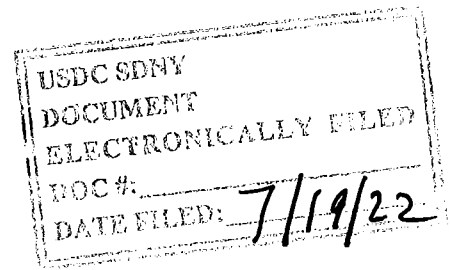
TOBIA SACCHETTI,

Plaintiff,

-against-

DOBBS FERRY POLICE DEPARTMENT;
AGENT A (JOHN) #1 POLICE OFFICER,

Defendants.



22-CV-3793 (VB)

ORDER OF SERVICE

VINCENT L. BRICCETTI, United States District Judge:

Plaintiff, currently incarcerated at the Westchester County Jail, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants subjected him to excessive force. By order dated July 18, 2022, the Court granted Plaintiff's request to proceed *in forma pauperis* (IFP), that is, without prepayment of fees.¹

STANDARD OF REVIEW

The Prison Litigation Reform Act requires that federal courts screen complaints brought by prisoners who seek relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a prisoner's IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint if the court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

DISCUSSION

A. Dobbs Ferry Police Department

Plaintiff's claims against the Dobbs Ferry Police Department must be dismissed. The Dobbs Ferry Police Department is an administrative arm of the Village of Dobbs Ferry. As such, it does "not have a legal identity separate and apart from the municipality, and cannot sue or be sued." *Carroll v. City of Mount Vernon*, 707 F. Supp. 2d 449, 450 n.2 (S.D.N.Y. 2010); *Warner v. Village of Goshen Police Dep't*, 256 F. Supp. 2d 171, 175–76 (S.D.N.Y. 2003). Plaintiff's claims against the Dobbs Ferry Police Department must therefore be dismissed.

In light of Plaintiff's *pro se* status and clear intention to assert claims against the Village of Dobbs Ferry, the Court construes the complaint as asserting claims against the Village of Dobbs Ferry, and directs the Clerk of Court to amend the caption of this action to replace the Dobbs Ferry Police Department with the Village of Dobbs Ferry. *See* Fed. R. Civ. P. 21. This amendment is without prejudice to any defenses the Village of Dobbs Ferry may wish to assert.

B. Service on the Village of Dobbs Ferry

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *See Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013) (citing 28 U.S.C. § 1915(d)); § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that summonses and the complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served summonses and the complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the

date summonses are issued. **If the complaint is not served within that time, Plaintiff should request an extension of time for service.** *Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012); *but see Murray v. Pataki*, 378 F. App'x 50, 51–52 (2d Cir. 2010) (summary order) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

To allow Plaintiff to effect service on the Village of Dobbs Ferry through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this Defendant. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all of the paperwork necessary for the Marshals Service to effect service upon this Defendant.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

C. John Doe Defendant

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the Dobbs Ferry Police Department to identify the police officer who allegedly used excessive force against Plaintiff at approximately 5:00 a.m. on February 25, 2022, near the post office in the Ardsley Shopping Center. It is therefore ordered that the Village of Dobbs Ferry, which is the municipal entity responsible for the Dobbs Ferry Police Department, shall ascertain the identities of the John Doe Defendant whom Plaintiff seeks to sue here and the address where this Defendant may be served. The Village of Dobbs Ferry shall provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint naming the John Doe Defendant. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 form with the address for the named John Doe Defendant and deliver to the U.S. Marshals Service all documents necessary to effect service.

CONCLUSION

The Court dismisses Plaintiff's claims against the Dobbs Ferry Police Department. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). The Clerk of Court is directed to add the Village of Dobbs Ferry as a Defendant under Fed. R. Civ. P. 21.

The Clerk of Court is further instructed to; (1) issue a summons and complete the USM-285 form with the address for the Village of Dobbs Ferry and deliver to the U.S. Marshals Service all documents necessary to effect service; (2) mail a copy of this order and the complaint to the attorney for the Village of Dobbs Ferry at: 112 Main Street, Dobbs Ferry, New York 10522; and (3) mail an information package to Plaintiff.

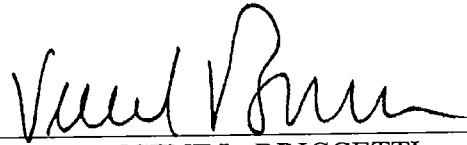
An amended complaint form is attached to this order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk shall mail a copy of this Order of Service, and its attachment, to Plaintiff.

SO ORDERED.

Dated: July 18, 2022
White Plains, New York

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

VINCENT L. BRICCETTI
United States District Judge

DEFENDANT AND SERVICE ADDRESS

Village of Dobbs Ferry
112 Main Street
Dobbs Ferry, New York 10522

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

22 CV 3793

(Include case number if one has been assigned)

AMENDED
COMPLAINT
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "*Bivens*" action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name

Middle Initial

Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated

Plaintiff's Signature

First Name

Middle Initial

Last Name

Prison Address

County, City

State

Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____